

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

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MONSANTO COMPANY and MONSANTO :
TECHNOLOGY LLC, :
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 : Case No. 4:09-cv-686 ERW
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 : Plaintiffs, :
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 : v. :
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 : E.I. DU PONT DE NEMOURS AND COMPANY and :
 : PIONEER HI-BRED INTERNATIONAL, INC., :
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 : Defendants. :
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DEFENDANTS' FOURTH MOTION TO COMPEL

Defendants E.I. du Pont de Nemours and Company and Pioneer Hi-Bred International, Inc. (collectively "Defendants" or "DuPont"), respectfully move this Court for the entry of an order compelling Plaintiffs Monsanto Company and Monsanto Technology LLC (collectively "Plaintiffs" or "Monsanto") to produce certain documents from related prior litigations.

Defendants respectfully request that this Court order Plaintiffs to produce written discovery responses, deposition transcripts¹, expert reports, hearing transcripts, trial transcripts, substantive motions (including summary judgment and nonprocedural motions), and materials which concern technology issues from the following proceedings: (1) *Mycogen Plant Science, Inc., et al. v. Monsanto Co.*, No. 95-CV-653 (S.D. Cal.); (2) *Mycogen Plant Science, Inc., et al. v. Monsanto Co., et al.*, No. 96-505 (D. Del.); (3) *DeKalb Genetics Corp. v. Syngenta Seeds*,

¹ With regard to deposition, hearing, and trial transcripts, Defendants request that the Court further order Plaintiffs to produce any and all exhibits associated with those transcripts.

Inc., et al., No. 4:06CV01191 ERW (E.D. Mo.); (4) *Rhone-Poulenc Agro, S.A. v. Monsanto Co., et al.*, No. 1:97CV1138 (M.D.N.C.); and (5) *Monsanto Co., et al v. Syngenta Seeds, Inc., et al.*, No. 1:04-cv-00305-SLR (D. Del.).

Defendants request that the Court compel Plaintiffs to produce these documents on an expedited time frame to prevent further delay. Plaintiffs have failed to produce these documents to Defendants despite numerous requests and a previous order from this Court compelling production. Moreover, Plaintiffs have used documents from previous litigations during recent depositions even though all of the documents from related prior litigations have not yet been produced to Defendants.

Defendants incorporate by reference their memorandum in support of their fourth motion to compel and its attached exhibits filed concurrently herewith, as if fully stated herein.

Pursuant to Local Rule 3.04, the parties have participated in numerous ongoing meet and confers regarding Plaintiffs' deficient responses to Defendants' discovery demands. Furthermore, in addition to the numerous letters that the parties have exchanged concerning discovery in this matter, Defendants again requested a portion of the documents addressed in this motion via letter on February 10, 2011. Plaintiffs responded to Defendants requests on February 21, refusing to produce such material. Accordingly, Defendants are forced to seek relief in the present motion because Plaintiffs' discovery delinquencies continue to mount and Plaintiffs' continued failure to produce these documents is causing Defendants significant prejudice.

WHEREFORE, Defendants respectfully move the Court for an Order compelling Plaintiffs to produce documents in response to DuPont's discovery requests identified in this motion and the accompanying memorandum in support and request that the Court set an appropriate expedited time for which such materials shall be produced.

Dated: February 23, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2011, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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